REGISTERED No. K. 107.

KERALA GAZETTE

SUPPLEMENTS

PUBLISHED BY AUTHORITY

Vol. IX] Trivandrum, Tuesday, 7th January 1964 / 17th Pausa 1885 (Saka) [No. 1

PART I

CONTENTS

Section ii

15. No. 44682/SS4/63/Home. dated 7-11-1963 [Govt. of India notification re: Defence of India (Tenth Amendment) Rules, 1963]

Section iii

16. Act 41 of 1963 (Malayalam).
17. Act 42 of 1963 (Malayalam).
18. Act 31 of 1963 (Tamil).

Section iv

19. Kerala Panchayats (Plan and Estimates) Rules, 1963.
20. Kerala Panchayats (Transfer of functions, institutions, works, powers and duties) Rules, 1963.

GOVERNMENT OF KERALA

Public (Services D) Department

NOTIFICATION

No. 105465/SD5/63/PD. *Dated, Trivandrum, 27th December* 1963.

It is hereby notified for general information that the person whose particulars are given below is debarred by Government from re-employment in Government Service.

Sl. No.	Name of person debarred	Post held	Department to which he belonged	Father's name	Permanent address	Age and date of birth	Religion	Height	Marks of identification
1	2	3	4	5	6	7	8	9	10
1	Sri K. Appukuttan	Panchayat Executive Officer	Panchayat Department	Ayyappan Kochappy	Pulimoodu Veedu, Thaliyal Karamana, Trivandrum-2	28 years 28-10-1110 (M. E.) 11-6-1935 (A. D.)	Hindu (Thandan)	5' 6"	1. Sharp deep scar on the right side of the nose. 2. A black dot on the inside of the left second finger.

By order of the Governor,
A. K. Kunhikannan Nambiar,
Joint Secretary.

G. 1.

To

All Heads of Departments.

All District Collectors.

All District Judges.

All District Superintendents of Police.

The Secretary, Kerala Public Service Commission (with C. L.)

The Registrar, High Court (with C. L.)

The Registrar, University of Kerala (with C. L.)

The Director of Intelligence Bureau, New Delhi (with C. L.)

All State Governments (3 copies each).

All Departments of Secretariat (all Sections).

Kerala Gazette No. 1 dated 7th January 1964
PART I

GOVERNMENT OF KERALA

Agriculture (Co-operative) Department.

G. O. MS-1123/63/Agri. *Dated, Trivandrum, 27th December* 1963.

Rules for the Grant of Loans and Subsidy to Wholesale Consumers' Co-operative Stores for the construction of godowns.

1. Loans and subsidy may be given to Wholesale Consumers' Co-operative Stores/Societies selected by the Registrar of Co-operative Societies for inclusion under the Centrally Sponsored Scheme, towards purchase of land and /or for construction of godowns, or purchase of existing godowns including value of site. In the case of purchase of existing godowns, the local Executive Engineer, P. W. D. will record the valuation of the godown proposed to be purchased, and certify that it will stand in good condition without substantial repairs for the period of repayment of the loan.

2. The Type Designs, Estimates etc., of the godowns to be constructed should be scrutinised and approved by the competent Engineer of the Public Works Department. A valuation fee calculated at 2½% on the cost towards the preparation of plans and estimates for godowns shall be paid to the P. W. D. This cost will also be taken into account in calculating the total cost of construction.

3. The Stores applying for assistance under the scheme should satisfy the Registrar of Co-operative Societies regarding the stores' title over the land on which the godown is proposed to be constructed.

4. Every application for loan should be submitted in duplicate, to the Registrar of Co-operative Societies through the Deputy Registrar concerned, in Form 'A' appended to these Rules. Every application should be accompanied by a resolution of the Committee of the Stores requesting to apply for the assistance and agreeing to abide by these Rules. The eligibility of the Stores for the assistance and its repaying capacity with full particulars of its financial position should be reported by the Deputy Registrar while recommending the application.

5. The Registrar may, after such enquiry as he deems necessary, make a recommendation to the Government for the sanction of the assistance. The total assistance both by way of loan and subsidy under the scheme shall be limited to the value of the godown (including value of the site and cost of construction as per estimates approved under Rule 2 of these Rules) subject to a maximum of Rs. 60,000. The loan will be limited to 75% of such assistance and the balance of 25% will be paid as subsidy.

6. Every store receiving the assistance from Government under these rules shall mortgage to Government its interest in the godown or godowns constructed or purchased out of the Government assistance inclusive of the site or sites on which they have been constructed.

7. (i) If the land or the land and godown are to be purchased with the loan amount, a preliminary agreement in Form 'C' will be executed by the society agreeing to purchase the land or the land with godown and to mortgage the same in favour of the Government.

(ii) The title of the land and building to be purchased should be got verified by the Government Pleader before an application for loan is made by the society and his certificates with other records produced along with the application to show that the society will get clear title to the land or land with building, free from encumbrances.

(iii) The land together with the godown thereon shall be mortgaged to Government to secure repayment of the loan. The mortgage deed in Form 'B' will be executed by such of the Officers or Committee Members of the Stores as are competent under its bye-laws to mortgage its land and buildings on behalf of the Stores. If, in any case, there is no specific provision in the bye laws regarding this, the mortgage deed shall be executed by the Secretary, President and such of the Committee Members as may be specifically authorised by the Board of Directors in this regard. The document shall bear the seal of the Stores and shall be registered. This registered deed together with the sale deed of the land (upon which the godown is proposed to be built) or of the land and godown as the case may be, together with all other documents specified by the Registrar in each case, shall be retained by the Deputy Registrar of the District.

8. The amount sanctioned will thereafter be drawn by the Stores in a Bill Form No. 42 in Kerala Treasury Code, Volume II countersigned by the Deputy Registrar of Co-operative Societies of the District concerned. A stamped receipt acknowledging the receipt of the amount shall also be sent to the Deputy Registrar along with the Bill. The amount so drawn should be deposited in the local District Co-operative Bank in a separate account in the name of the Store. Such amounts shall be drawn by the Secretary or President or both, of the Stores whoever is/are authorised to operate on the Bank accounts, in instalments according to the progress of the construction with the permission of the Deputy Registrar. Requests for permission to withdraw the amount from time to time should be supported by Certificates from the Assistant Engineer, P. W. D. and the local Co-operative Inspector to satisfy the Deputy Registrar that the instalment (together with instalments, if any, already drawn) have been properly utilised and the work already done represents expenditure exceeding the amount already drawn by the Stores for the construction. If the amount sanctioned is for the purpose of purchase of land with godown the amount shall be drawn in lump sum with the permission of the local Deputy Registrar.

9. The loan will cary interest at such rates as may be prescribed by Government from time to time. The interest will accrue from the date of drawal of the loan amount from the Treasury.

10. The loan shall be for a period of 15 years and shall be repayable in 14 annual equal instalments, the first instalment in respect of principal falling due on the second anniversary of the drawal of the loan from the Treasury. First instalment of the interest will however be payable on the first anniversary of the drawal of the loan, and subsequent instalments along with the instalments of Principal.

11. If the Store defaults repayment of any instalment or instalments on the due date, the entire loan will become recoverable in a lump. A penal interest at 2% per annum over and above the normal rate of interest will be levied for the non-payment of any instalment or instalments.

12. The loan will become recoverable in lump if the loan is in the opinion of the Registrar of Co-operative Societies utilised for any purpose other than the one for which it is intended, or if the construction of the godown is not completed within the time allowed or if any direction issued under Rule 16 is not carried out.

13. The Registrar of Co-operative Societies shall be competent to order the recovery of any loan under Rules 11 and 12.

14. All amounts ordered to be recovered shall be recoverable as though they are arrears of land revenue in accordance with the provisions of the Revenue Recovery Act for the time being in force.

15. It shall be competent for the Registrar to issue any directions, that he may consider necessary for the proper utilisation of the loan and such orders shall be carried out by the Stores.

16. The Stores shall from time to time regularly enter in the records of the Stores all the transactions pertaining to the loan. A separate account should be maintained by the Stores showing the details of receipt and utilisation of the loan amount.

17. The construction of the godown shall be completed within one year from the date of drawal of the loan from the Treasury. The Registrar may for valid and sufficient reasons to be recorded in writing, extent the period for completion from time to time, provided the total period of such extension shall not exceed one year unless prior sanction of Government has been obtained.

18. The construction of the godown will be supervised by the local Assistant Engineer, P. W. D.

19. Notwithstanding anything contained in the Rules 6 and 7 regarding ownership of land on which the godown is to be constructed, loans may be granted in special cases for the construction of godowns on lands in possession of the society over which it has lease-hold rights, provided the tenure of lease exceeds the period of repayment of the loan and the lessor is the Government or a quasi-Government Institution. The Restriction regarding the period of lease shall not apply to lands held under Kanam and Kuzhikanam rights in the Malabar area, provided that the written consent of the Jenmi has been obtained for the construction.

20. The Deputy Registrar of Co-operative Societies of the District concerned shall be responsible for maintaining the accounts with regard to the disbursement and repayment of the loans. The Deputy Registrar shall also verify the fulfilment of the conditions and maintain such other registers to facilitate watching the prompt recovery of the loan. The Deputy Registrar shall furnish to the Registrar the certificate of acceptance of closing balance at the end of each financial year. The Registrar shall furnish a consolidated certificate to the Accountant General.

21. Subsidy will be sanctioned only after complete utilisation of the loan amount and the stores furnishing a certificate to that effect to the Registrar of Co-operative Societies.

22. The amount sanctioned towards subsidy shall be drawn in grant-in-aid bills, countersigned by the Deputy Registrar of Co-operative Societies of the District. A certificate by the Assistant Engineer,

P. W. D. should accompany the bill to satisfy the Deputy Registrar that the loan portion drawn has been fully utilised and that the building is constructed according to the approved plan and the construction is worth the amount advanced.

23. In case where the entire amount sanctioned as loan is not utilised a proportionate reduction shall be made in the subsidy sanctioned to the Stores and no subsidy shall be disbursed before the unspent portion of the loan is refunded.

24. The Deputy Registrar shall watch the utilisation of subsidy and furnish the utilisation certificate to the Accountant General.

25. The Stores shall insure the godown for an amount not less than the loan amount with the State Insurance Department or an Insurance Society approved by the Registrar.

FORM 'A'

Application for loan for construction of Godown

From

The..............................
The...............Wholesale Co-operative Stores Ltd., No...............
Post............................
Taluk........................
District........................

To

The Registrar of Co-operative Societies, Trivandrum.

Through the Deputy Registrar of Co-operative Societies,...........

Sir,

I submit herewith an application for loan of Rs........................ (in words)........................(in figures) repayable in (14) fourteen equal annual instalments; the first instalment to be paid on the expiry of two years from the date of disbursement of the loan to the society. A copy of Resolution No .... dated .... of the Board of Management resolving to apply for the loan is enclosed. I also enclose herewith a copy of the agreement to be executed by the society in favour of the Government of Kerala, when the loan is sanctioned. The amount is required for the purchase of land and/or for construction of godown by the society. I hereby undertake to submit the records and furnish such information as you may require in connection with the disbursement and repayment of this loan. Copy of latest Audit Report of the Store is forwarded herewith.

The amount drawn will be deposited by me in a public account in the local Treasury/the Central or District Co-operative Bank concerned in a separate account in the name of the Store to be drawn according to the progress of construction and with the sanction of the Deputy Registrar.

Yours faithfully,

Secretary/President.

FORM 'B'

THIS DEED OF MORTGAGE made this the................ day of......................One thousand nine hundred and sixty ....By the .... Society, a Society registered under the............................ Act and having its registered office at............................ (hereinafter called "the Mortgagor") in favour of the Governor of Kerala (hereinafter called "the Government");

WHEREAS the Mortgagor has applied for financial assistance of Rs. .... under the "Rules for the grant of loan and subsidy to wholesale Consumers Co-operative Stores for the construction of Godowns" (hereinafter referred to as "the Rules") for............ ....(Here enter the purpose......................;

WHEREAS the Government have in their Order No.......... dated......................(hereinafter referred to as "the Order") sanctioned the payment of a sum of Rs. ....(Rupees in words also) to the Mortgagor by way of loan and a sum of Rs......... ....by way of subsidy for the purpose.................. (Here enter the purpose) subject to the terms and conditions contained in the Order and in the Rules copies of which are hereto annexed and which shall form part of this deed, as if they are incorporated herein, and subject to the terms and conditions hereinafter appearing;

NOW THESE PRESENTS WITNESS as follows :—

1. In consideration of the loan of Rs.................. and subsidy of Rs................... (Rupees in words also) paid by the Government to the Mortgagor (the receipt of which the Mortgagor doth hereby admit and acknowledge), the Mortgagor doth hereby transfer by way of simple mortgage to the Government the lease hold right of the Mortgagor in respect of the property mentioned and described in the Schedule hereunder written along with the building to the construction thereon and all other improvements effected thereon from time to time to the Intent that the said right, building and other improvements shall remain and be charged as security for the payment to the Government of the said loan amount, interest and penal interest, if any, and the proper utilisation of the subsidy amount in accordance with the Rules and the Orders and as securities for the due fulfilment by the Mortgagor of the terms and conditions herein contained and those contained in Rules and in the Order and that the Government shall have first charge over the same.

2. The Mortgagor doth hereby agree that he will abide by the Rules and the terms and conditions in the Order which shall form part of this deed.

3. The Mortgagor shall not during the continuance of this security, create any mortgage, lien or charge by way of hypothecation, pledge or otherwise create encumbrance of any kind whatsoever in respect of his right over the properties described in the Schedule hereto and the building and other improvements made thereon or let or lease or part possession of any of them and the same shall remain and continue to remain free from any encumbrance or liability whatsoever.

4. The Mortgagor doth hereby agree that the amount of the loan and the amount of subsidy shall not be utilised for any purpose other than that for which they are granted.

5. The Mortgagor shall start the work for the execution of which the loan and subsidy are granted within.......... .... from the date of receipt of the loan and subsidy and shall execute the work in accordance with the directions of the Assistant Engineer, P. W. D., or other officer appointed in this behalf by the Government and shall complete the work within the time limit specified in the order sanctioning the loan and subsidy.

6. The Mortgagor shall maintain a register and render correct accounts of the expenditure incurred out of the loan and subsidy. The accounts shall be open to inspection by such officers authorised in this behalf by the Government.

7. The Mortgagor shall immediately on completion of the work intimate the fact to the Assistant Engineer, P. W. D.

8. The Mortgagor shall refund to the Government the excess amount over the actual cost of the work within a week.

9. The loan shall bear interest at the rate of............per cent per annum.

10 The loan shall be repaid by the Mortgagor in.................. instalments of Rs. ....each. The first instalment shall become due on the date of expiry of............years from the date of disbursement of the loan amount and thereafter the subsequent instalments shall become due on the corresponding dates of the succeeding years until the loan is fully repaid. The interest due on the loan amount outstanding on the date of payment of an instalment shall be paid along with that instalment.

11. If any instalment of Principal or Interest is not paid on the due date a penal interest at the rate of .... per cent in addition to the usual rate shall be paid on such amounts as are not paid on the due dates.

12. The Mortgagor shall insure the godown constructed for an amount not less than the loan amount with the State Insurance Department or an Insurance Society approved by the Registrar and the Policy may be assigned in favour of the Government.

13. In case the Mortgagor fails to comply with all or any of the terms and conditions on which the said loan and subsidy has been granted either by applying the loan amount or the subsidy amount or any part thereof otherwise than as provided in the said Rules or shall not duly repay the amount of the said loan or any part thereof or any interest thereon or any part thereof or commit breach of all or any of the terms and conditions herein contained or in the Rules or in the Order, then and in any such case the Government shall be competent to recover the entire loan amount then outstanding with interest and penal interest and the entire subsidy amount in a lump at once and the Government shall have power to proceed against the security properties to recover such sum and the Government shall have all the powers vested in a mortgage under sections 69 and 69A of Transfer of Property Act (Act 14 of 1882).

14. If the Mortgagor shall duly comply with all the terms and conditions of These Presents and repay the amount in full with interest the Government shall thereupon at the request and cost of the Mortgagor relinquish all his rights and interests in the security properties and the godown and improvements thereon to the Mortgagor.

15. All sums found due to the Government under or by virtue of These Presents shall be recoverable from the Mortgagor and his properties movable and immovable as if they were arrears of land revenue under the provisions of the Revenue Recovery Act for the time being in force or in any other manner as the Government may deem fit.

16. In case any doubt or dispute arises under or by virtue of this deed the decision of the Government thereto shall be final and legally binding on the Mortgagor.

IN WITNESS WHEREOF SHRI..........................and
SHRI.......................

for and on behalf of the Mortgagor have hereunto set their hands the day and year first written.

SCHEDULE ABOVE REFERRED TO

Signed by Shri...
Shri...

In the presence of witnesses:

(1)
(2)

FORM 'C'

Form of Preliminary Agreement to be executed by Wholesale Co-operative Stores when State Loans and Subsidy are taken by them for the purchase of land with Godown.

"THIS AGREEMENT is executed on this the................day of...........One thousand nine hundred and sixty three BETWEEN the............................Stores No............a Co-operative Society registered under the.......................Act and having its registered office at.....................(hereinafter referred to as "the Society") of the one part and the Governor of Kerala (hereinafter referred to as "the Government") of the other part;

WHEREAS the Society has applied to the Government for a loan and subsidy of Rs.............under the Rules for the Grant of Loans and Subsidy to Wholesale Consumers Co-operative Stores for the purchase of land with godown (hereinafter referred to as "the Rules") which expression shall where the context so admits or implies include any amendments thereto.

AND WHEREAS the Government have in their order No........ dated.................(hereinafter referred to as "the Said Order") sanctioned a loan and subsidy of Rs....................to the Society subject to the terms and conditions contained in the Rules and those hereinafter appearing;

NOW THESE PRESENTS WITNESS as follows:—

1. The loan and subsidy of Rs. ....hereby advanced by the Government to the Society (the receipt of which the Society doth hereby admit and acknowledge) shall be utilised by the Society for purchase of land with godown within six months from the date hereof in accordance with the said Order and the Rules.

2. The Rules and the said Order shall form part of this agreement as if incorporated herein.

3. If the actual price paid for the purchase of land with godown is less than the loan and subsidy amount hereby advanced the Society shall repay the excess immediately to the Government.

4. The Society shall deposit the loan amount in the local District Co-operative Bank in a special account and shall be withdrawn only for the purpose for which it is meant with the prior approval in writing from the Registrar of Co-operative Societies or the Deputy Registrar of Co-operative Societies of the District.

5. The Society shall comply with all the terms and conditions contained in the said order, the Rules and those herein contained.

6. The society shall as soon as the land with godown is purchased execute a mortgage deed in favour of the Government mortgaging the land and the godown as security for the repayment of the loan amount with interests and costs, if any, and for the due fulfilment of the terms and conditions contained in the said order and the rules.

7. In case the society commits breach of all or any of the terms and conditions contained in the said order, the Rules or those herein contained, the entire loan and subsidy amount together with interest due thereon at the rates specified in the Rules shall immediately become repayable in a lump and the society shall pay the same at once.

8. All sums found due to the Government under or by virtue of this agreement shall be recoverable from the society and its properties movable and immovable under the provisions of the Revenue Recovery Act for the time being in force as though such sums are arrears of land revenue or in such other manner as the Government may deem fit.

IN WITNESS WHEREOF Sarvashri........................ ....for and on behalf of the society and Shri.................................for and on behalf of the Governor have hereunto set their hands the day and year first above written.

Signed by Shri...............................
Shri...............................

In the presence of witnesses:—

(1)
(2)

Signed by Shri...............................

In the presence of witnesses:—

(1)
(2)

The Seal of the............................Stores is affixed hereto in the presence of

(1)
(2)

Kerala Gazette No. 1 dated 7th January 1964
PART I

GOVERNMENT OF KERALA

Abstract

RULES—KERALA SERVICE RULES—LEAVE NOT DUE—AMENDMENT TO RULE 85, PART I—ISSUED

FINANCE DEPARTMENT

G. O. (P) 632/63/Fin. Dated, Trivandrum, 27th December 1963.

NOTIFICATION

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Kerala hereby makes the following amendment to the Kerala Service Rules, namely:—

AMENDMENT

G. S. No. 52/63 DATED 27-12-1963

In Part I of the said rules, the existing note under rule 85 shall be numbered as Note 1 and after Note I as so numbered the following shall be added, as Note 2, namely:—

"Note 2.—Except as provided in Note 1, leave not due when granted should in all cases (subject to the officer's wishes) be allowed to stand, including cases in which the officer fails to earn it by subsequent duty".

By order of the Governor,
K. A. SREEDHARA MENON,
Joint Secretary.

To

The Accountant General.
The Heads of Departments and Offices.
The Secretary, Kerala Public Service Commission (with C. L.).
The Registrar of High Court (with C. L.).
The Registrar, University of Kerala (with C. L.).
The Departments and Sections of the Secretariat.
The Secretary to the Governor and Comptroller, Governor's Household.
The Secretaries, Additional Secretaries, Joint Secretaries, Deputy Secretaries, Under Secretaries and Assistant Secretaries to Government.
The Private Secretaries to the Chief Minister and other Ministers.
The Personal Clerk to the Chief Secretary.
The Superintendent of Government Presses.

G. 4326.

Kerala Gazette No. 1 dated 7th January 1964
PART I

GOVERNMENT OF KERALA

Abstract

RULES—KERALA TREASURY RULES—ARREARS OF PENSION IN RESPECT OF A DECEASED PENSIONER—SANCTION BY AUDIT OFFICER—MONETARY LIMIT—ENHANCED—AMENDMENT ISSUED.

FINANCE DEPARTMENT

G. O. (P) 8/64. Dated, Trivandrum, 2nd January 1964.

NOTIFICATION

In exercise of the powers conferred by clause (2) of Article 283 of the Constitution of India, the Governor of Kerala hereby make the following amendment to the Kerala Treasury Rules, namely:—

AMENDMENT

Correction Slip No. 1/1964

In the said rules, in the last Sentence of rule 299 (a), for the figure '100' the figure '500' shall be substituted.

By order of the Governor,

V. RAMACHANDRAN,
Additional Secretary.

To

The Accountant General, Kerala.
All Heads of Departments and Offices.
The Registrar of High Court (with C. L.)
The Secretary, Public Service Commission (with C. L.)
The Registrar, University of Kerala (with C. L.).
The Secretary to the Governor.
The Private Secretary to the Chief Minister and other Ministers.
All Departments of the Secretariat.
The Secretaries Additional Secretaries, Joint Secretaries, Deputy Secretaries and Assistant Secretaries.
The Personal Clerk to the Chief Secretary.
The Superintendent of Government Presses, Trivandrum.

G. 37

Kerala Gazette No. 1 dated 7th January 1964
PART I

GOVERNMENT OF KERALA

Health and Labour Department (D)

NOTIFICATION

No. 18784/D4/63/HLD. *Dated, Trivandrum, 5th December* 1963.

In exercise of the powers conferred by sub-section (i) of Section 4 of the Kerala Corneal Grafting Act, 1963 (Act 17 of 1963) the Government of Kerala hereby make the following rules namely:—

RULES

1. *Short title and commencement.*
   (a) These rules may be called the Kerala Corneal Grafting Rules 1963.
   (b) They shall come into force on such date as the Government may by notification in the Gazette, appoint.

2. *Definitions.* In these rules, unless the context otherwise requires
   (a) The 'Act' means the Kerala Corneal Grafting Act, 1963
   (b) "Section" means a section of the Act
   (c) "Form" means a form appended to these rules.

3. *Written bequest.* The 'Written bequest' referred to in section 3 of the Act shall be in the form prescribed in the Schedule I. The written bequest and withdrawal of such bequest shall be addressed to the Superintendent or head of the approved institution.

4. *Oral b quest.* The oral bequest and the withdrawal of such bequest shall be made bef re a Judicial Officer not below the rank of a Sub-Magis rate or Honorary Magistrate.

5. *Authorised Medical Officer.* The Medical Officer authorised to remove the eye or eyes under sub-section (3) of seciton 3 of the Act shall be of the rank of an Assistant Surgeon or an Honorary Assistant Surgeon of a Civil Surgeon or an Honorary Surgeon with posgraduate qualification in Ophthalmology or in charge of Ophthalmic Departments as well as a Medical Graduate (qualified in Allopathy) who has worked in an ophthalmic Department for not less than one year.

6. *Claiming of Dead body.* The dead body lying in a hospital, prison, nursing home or institution shall be claimed within half an hour from the time of death in case there is no facility for cold storage of the dead body or within four hours from the time of death, in case facilities for cold storage of the dead body are available. If the dead body is not claimed within the period afo esaid and if the person having control and management of the institution concerned or the person designated by him in this behalf considers that the removal of the eye or eyes from the body may be authorised, he shall give the authority therefor in the form prescribed in Schedule II.

7. *Authorisation by person in lawful possession.* Before the removal of the eyes of the deceased persons is made a written authorisation from the person or persons who are in lawful possession of the body should be obtained for the same in the form appended to Schedule III.

G. 4361

Schedule I

Written Bequest (*see rule* 3)

(THE KERALA CORNEAL CRAFTING ACT 1963—
ACT 17 OF 1963)

To

....

Sir,

I, ... son/daughter/wife of minor/major aged...................years hereby bequest my left and right eye (s) for therapeutic use after my death.

Identification marks:

1.
2.

( )
Signature in full with present
and permanent residential address.

Signature of witnesses
with their addresses.

1.
2.

Signature of parent or guardian.

Station.
Date.

Schedule II

(*See* rule 6)

To

....

Sir,

I,..being the person having the control and management of the Hospital/Prison/Nursing Home/institution having been designated in that behalf by the person having the control and management of the hospital, prison nursing home or institution hereby authorise the removal of the eyes from the body of the deceased Sri..............................with the following identification marks.

1.
2.

Signature and Designation.

Station.
Date.

Official seal.

Schedule III

Authorisation by person in lawful possession of the body of the deceased [(see rule 7 and section 3 (2)].

Sir,

I, ...being the person lawfully in possession of the body of the deceased Shri.................... .. hereby authorise the removal of the eye (s) bequested by the deceased.

I have read (or caused to be read) the Kerala Corneal grafting Rules..................................before signing this authorisation. I declare that no inquest may be declared to be held on the body of the said deceased, and I further declare that none of the near relatives of the said deceased had expressed their objections to deal with the eye (s) of the deceased as bequested by the deceased. The said deceased has not withdrawn his/her bequest until his/her death.

Identification marks of the deceased

1.

2.

Signature and address in
full Relationship of the deceased.

Date, hour and minute of death.

Station.

Date.

By order of the Governor,

A. Sethumadhava Menon,
Secretary.

Kerala Gazette No. 1 dated 7th January 1964
PART I

GOVERNMENT OF KERALA

Health and Labour Department (E)

NOTIFICATION

No. 62418/E.3/63/HLD. *Dated, Trivandrum, 30th December* 1963.

In exercise of the powers conferred by Section 18 of the Travancore-Cochin Registration of Births and Deaths Act, 1953 (Act 8 of 1953), the Government of Kerala hereby make the following amendments to the Travancore Cochin Registration of Births and Deaths Rules, 1955 the same having been previously published as required by the said section, namely:—

AMENDMENTS

In the said rules:—(1) Rules 30 and 31 shall be renumbered as rules 30 (i 30 (.i) respectively and the following shall be added as rule 30 (iii) namely:—

"30 (iii) No fee shall be payable by an Officer of the Government of Kerala or by any person duly authorised by the District Soldiers Sailor's and Airmen's Board for searching or for obtaining any extract from any register of births and deaths for a bona fide public purpose, including investigation of pension claims, from families of deceased Indian Military personnel".

(2) Rules 32 and 33 shall be renumbered as rules 31 and 32 respectively.

(3) In forms A2, B2 and C2, appended to the Rules, for the brackets, words and figures "(See Rule 32)", the brackets, words and figures "(See rule 31)" shall be substituted.

By order of the Governor,
A. SETHUMADHAVA MENON,
Secretary.

G. 36

Kerala Gazette No. 1 dated 7th January 1964
PART I

GOVERNMENT OF KERALA

Health and Labour Department (Labour)

NOTIFICATION

No. 83676/H2/63/HLD. *Dated, Trivandrum, 23rd December* 1963.

The award of the Industrial Tribunal, Trivandrum, in respect of the dispute between the Management of Messrs. Marikar Engineers (P) Ltd., Trivandrum and Shri V. Arjunan, Workman, Messrs. Marikar Engineers (P) Ltd., Trivandrum received by Government on 21-12-1963 is hereby published under Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order of the Governor,
P. U. John,
Deputy Secretary.

Before the Court of the Industrial Tribunal, Trivandrum

Present:

SRI K. K. KESAVAN, B. A., & B. L.
INDUSTRIAL TRIBUNAL, TRIVANDRUM

In

INDUSTRIAL DISPUTE No. 12/1963

Between

SHRI. V. ARJUNAN,
(*Complainant*).
WORKMAN, MESSRS. MARIKAR ENGINEERS (P) LTD., TRIVANDRUM

And

THE MANAGEMENT
M/s. MARIKAR ENGINEERS (P) LTD., TRIVANDRUM
(*Opposite Party*).

Representations:

1. Shri K. C. Vamadevan, General Secretary Trivandrum District Motor and Engineering Workers' Union, Trivandrum. — *On behalf of the Complainant.*
2. Shri. K. S. Rajamony, M. A. and M. L., Honorary Law Officer, Chamber of Commerce, Trivandrum. — *On behalf of the Opposite Party.*

AWARD

This is a complaint under Section 33 A of the Industrial Disputes Act filed by one Sri V. Arjunan against the Management of Messrs. Marikar Engineers (P) Limited, Trivandrum. It is alleged that the Opposite Party has been guilty of a contravention of the provision of Section 33 of the Industrial Disputes Act. During the pendency of I. D. 28/1962 before the Tribunal, the Management have wilfully transferred the complainant from Trivandrum to Kottayam on 27-4-1963, thus altering the conditions of service to his prejudice. The action of the management is unjustifiable and is a clear contraven-

tion of the provision of Section 33 of the Act. It is also stated that there is no usual procedure of transferring workmen from Trivandrum to elsewhere and the spirit and understanding of the terms and conditions under which the employees were recruited in Trivandrum is that they will have to serve only in Trivandrum. It is further contended that the management used the weapon of transfer to victimise the workmen under peculiar circumstances. Therefore the complainant would pray that the Tribunal may be pleased to decide the complaint and pass such orders thereon as it may deem fit and proper.

2. The above complaint was registered as I. D. 12/1963. The Opposite Party entered appearance and filed their written statement, denying the allegations set forth in the complaint. It is stated that there have been no violation of Section 33 of the Act and the application presented by the Union must be dismissed as it is without any basis. The petition is not in accordance with the provisions of the Act and the rules framed thereunder. On merits also there is no ground for such a complaint. Section 33 A has absolutely no applicability to the facts of the present case. No cause of action has been disclosed for a complaint. The management admits that the worker Sri Arjunan was transferred from Trivandrum to Kottayam branch of the Company by order dated 26-4-1963. The transfer has not involved or occasioned any alteration in the conditions of service. Transfer is a normal and natural incident of employment in the Company and transfers are effected whenever business exigencies demand the same in the opinion of the management. I. D. 28/1962 pending decision relates to the question whether the transfer of Sri Wilfred was on account of victimisation, and that dispute has nothing to do with the transfer of Sri Arjunan. Therefore the Opposite Party would pray that the complaint be dismissed with costs.

3. In the nature of the contentions raised by the Opposite Party in its written statement, before entering into the merits of the case, let me first consider the question as to whether the complaint is, maintainable under law or not. Sri K. S. Rajamony, the Honorary Law Officer, Chamber of Commerce, appearing for the management argued that there has been no violation of the provision of Section 33 of the Act by the present transfer. The transfer is only a normal and natural incident implied in the contract of service. There had been transfers from one branch to another. The Marikar Engineers have got five branches. By transferring the complainant the management has not altered to the prejudice of the employee, the conditions of service applicable to him. He has cited 1957 (I) LLJ 326 and 1957 (ii) LLJ 567 and argued on the basis of the principles ennunciated therein in support of his contentions.

4. Apart from the allegation that the management has contravened the provisions of Section 33 of the Industrial Disputes Act during the pendency of the main dispute, the complainant has failed to substantiate his contention by reliable and conclusive evidence either oral or documentary. Therefore I have no hesitation to conclude that the present application under Section 33 A of the Industrial Disputes Act is not maintainable under law. In the result the complaint is dismissed as unsustainable. No order as to costs.

5. An award is passed in terms specified above.

Trivandrum,
17-12-1963.

K.K. KESAVAN,
Presiding Officer,
Industrial Tribunal.

Kerala Gazette No. 1 dated 7th January 1964
PART I

GOVERNMENT OF KERALA

Health and Labour Department (Labour)

NOTIFICATION

No. 72722/H4/63/HLD *Dated, Trivandrum, 7th November* 1963.

The award of the Labour Court, Quilon in respect of the dispute between the Management of M/s. Madura Co., (Private) Ltd., Cochin and their workmen represented by the Cochin Commercial Employees Association, Cochin received by Government on 2-11-1963 is hereby published under Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947).

By order of the Governor,
P. U. John,
Deputy Secretary to Government.

Before the Labour Court, Quilon.

Present:

Shri. V. K. Madhavan Nair, B.A.& B.L.

In

INDUSTRIAL DISPUTE No. 11/63

Between

THE MANAGEMENT OF
M/s. Madura Company (Private) Ltd.

And

THEIR WORKMEN
Represented by
the General Secretary, Cochin Commercial Employees' Association, Cochin-1.

AWARD

This industrial dispute between the above parties was referred to this Court by Government for adjudication under Section 10 (1) (c) of the Industrial Disputes Act of 1947 (Central Act XIV of 1947) by order No. 9869/H4/63/HLD dated 15-2-1963. The question referred for adjudication relates to:—

"Dismissal of Serang O. M. Thommy".

The case put forward by the Association in their statement is the following:—

On 22-5-1962 when Sri Thommy was returning from Quilon with his tug and tank boats in tow at a place called Pallipuram about 30 men came in country boats near the tank boats, threatened and assaulted him and other tank boat and tug crew alleging that the tug and tank boats in tow damaged some fishing poles and nets belonging to them. Sri Thommy and the crew were delayed there till morning and as soon as he arrived at Cochin the crew reported to the management about the incident and assault. On 3-8-1962 the management served

a charge sheet dated 28-7-1962 upon Sri Thommy charging him with gross negligence, either drunkenness or sleeping while on duty and causing unnecessary loss of Rs. 500 to the Company. Sri Thommy submitted the reply to the management. On 6-8-1962 the management issued another show cause notice charging him with imputation of dishonesty against officers involved in the matter in his explanation to the previous charge. On 8-8-1962 Sri Thommy submitted his explanation to the second charge denying the allegations. Then the management sent a letter dated 7-8-1962 to him fixing an enquiry, and immediately upon receipt of the same Sri. Thommy requested the management that Sri. V. A. Varghese, an employee of the Company be directed to help him at the enquiry and also requesting for copies of the documents intended to be used at the enquiry, but the management refused both the requests. On 22-8-1962 he was again served with another letter fixing an enquiry into the charges contained in the second charge sheet. On 17-8-1962 and subsequently an enquiry was conducted. No reasonable opportunity was given to Sri. Thommy to prove his innocence. On 29-9-1962 the management dismissed him on both the charges. The dismissal of Sri Thommy is illegal, void and in-operative. The dismissal order is made in violation of the principles of natural justice. The witnesses whose evidence was to be utilised against the employee were not examined in full before the employee and no effective opportunity was given to cross-examine them. The dismissal is based without any facility being given to the employee to get the assistance of a co-employee at the time of the enquiry. The alleged statements of witnesses were not given to the employee before-hand to know the case against him. At the enquiry no evidence had been recorded to prove any of the charges and therefore the finding of the enquiry, if any, is perverse. Sri Thommy is unemployed from the date of dismissal and hence he is entitled to get his full wages from the date of dismissal to the date of his reinstatement.

It is therefore prayed by the Association that an award be passed re-instating the worker concerned with full back wages.

In the reply statement filed by the management the following contentions are raised:—

Sri Thommy was dismissed from service after he was found guilty of certain misconducts, viz., that he was grossly negligent and careless in the performance of his duties in that on the night of the 22nd May 1962, at about 24.00 hours while he was proceeding in tug Suriya as its syrang with 6 crafts in tow, at a place called Pallipuram, due to his careless and negligence the tug and crafts in tow dashed against 22 fishing stakes causing extensive damage to the stakes and the nets attached to them; that he was either drunk or sleeping while on duty and that the accident occured due to either of these reasons and that it prevented him from steering the tug properly and that he caused unnecessary loss to the Company in that by his negligence the Company had to pay Rs. 500 as damages and that he was liable to make good the loss to the Company. In the enquiry held in respect of the charge-sheet dated 28th July 1962, the enquiry officer found him guilty of the misconducts levelled against Sri Thommy. He was given a show cause notice dated 6-8-1962, and in the enquiry held in respect of this charge-sheet also he was found guilty. The dismissal of Sri Thommy was for proper and justifiable reasons and that he is not entitled to any relief whatsoever. The management has lost confidence in Sri Thommy and

in no view of the matter he is entitled to reinstatement or to any other relief. It is not correct to say that the management served charge-sheet on 3-8-1962 as stated in para 3 of the statement of the Association. The dismissal order was not made in violation of the principles of natural justice. In a domestic enquiry it is not necessary that assistance of a co-employee should be given. Sri Thommy was and is employed in a fishing boat and he is earning more than Rs. 5 per day. He is not entitled to reinstatement.

It is therefore prayed by the management that an award be passed upholding the dismissal of Sri Thommy.

The points that arise for consideration are:—

(1) Whether the enquiries held against Syrang O. M. Thommy are vitiated by any of the infirmities as contended?

(2) If so, whether the dismissal is justified?

(3) Reliefs and cost.

Both parties adduced evidence before this Court. The evidence of the Management consists of the oral testimony of the enquiry officers examined as EW1 and EW2 and marking of Exts. E1 to E21. The Association has examined the dismissed worker as WW1 and has proved Exts. W1 to 12.

Points Nos. 1 & 2:—Ext. E8 is the copy of the proceedings of the enquiry on the basis of the charge sheet, Ext. E1, conducted by EW1 while Ext. E9 is the copy of the findings thereon. Ext. E12 is the copy of the enquiry proceedings in respect of the charge-sheet, Ext. E10, conducted by EW2 while Ext. E13 is the findings thereon. I shall first consider the objections regarding Ext. E8 and E9 raised by the Association. The first objection raised by the learned counsel relates to enquiry officer, EW1, who conducted the enquiry. According to him the enquiry officer was disqualified from acting as an enquiry officer of Ext. E1 charge since he was the head of the barge department of the company and the person involved in investigating and settling the claims arising out of the alleged accident causing damages to the fishermen's nets and stakes. He admits that it was he who signed the voucher for Rs. 500 as damages in settling the claim of the fishermen which according to him was caused by the barge and tow, the syrang of the barge being Thommy. EW1 was cross-examined regarding his involvement in settling the claims and in the earlier stages of his cross-examination he tried to avoid his interest in the matter in settling the claim but subsequently he had to admit that he was also involved in settling the matter. He had to admit that in Ext. E 13 he was one of the officers referred to who took part in settling the matter but added that he had only to sign the voucher for Rs. 500. The cross-examination further shows that subsequently he had to admit that before he signed the voucher he was satisfied that the Company had the liability to pay this amount to the fishermen. He also added that he was convinced that the nets were damaged and Rs. 500 demanded by them was reasonable. In another portion he stated as follows:—"I was satisfied the tug Suriya was responsible for the accident". And when he was questioned whether he had seen Ext. M 1 of Ext. E 8, he stated as follows: "I think I have seen Ext. M 1 after my enquiry". As a matter of fact, Ext. M 1 at page 129 of the paper

book will show that it is the explanation given by Sri Thommy regarding the accident. The learned counsel stated that this evidence would clearly lead to the inference that even before he started the enquiry he had pre-judged the issue, for what had to be decided was whether Sri. Thommy, the syrang of Suriya was responsible for the accident as alleged in the charge-sheet. The fact that the enquiry officer stated that he was convinced that the tug was responsible leads necessarily to the inference that Sri. Thommy was really responsible. Apart from this the learned counsel also drew my attention to another circumstance which led to the inference that EW 1 was biased against the dismissed worker. The subject matter of the second enquiry evidenced by Ext. E10 is based on an alleged innuendo contained in Ext. M 1 of Ext. E 12, i.e., the second enquiry. In that enquiry EW1 was a witness and he was examined on 30-8-1962. A perusal of the said deposition will show that he has got serious complaints against Sri. Thommy. He has definetly stated therein that in the letter of Thommy, Ext. M1, the phraseology "by officers" could mean only himself and Bhaskaran". According to him wild allegations have been made against him touching his honesty. He would further add that Sri. Raman Pillai, the author of the letter, had told him on 22-8-1962 that the allegations were made by Thommy against him and the testimony would show that he was convinced of it. It has to be pointed out at this stage that the enquiry report, Ext. E 9, was made on 20-9-1962. It is also significant to note that the first enquiry was started on 16-8-1962 and continued up to 5-9-1962 and the findings were recorded on 20-9-1962 so that it was while he was presiding over the first enquiry that he deposed against Thommy in the second enquiry so that one could easily infer the state of mind of the enquiry officer who was conducting Ext. E 8 enquiry. It cannot also be stated that two enquiries are independent and disconnected as was pointed out by the learned counsel for the management. The subject matter of the two enquiries are inter-connected since the second enquiry started on the basis of a letter sent by Sri. Thommy with respect to the charge, Ext. E 1. A definite question was also asked to Sri. John whether he did not feel aggrieved regarding the innuendo made against him and his answer was that he was not, which is too much to be believed for any reasonable man will have some feelings when he has been falsely charged with dishonesty. These two circumstances were relied on by the learned counsel of the Union to show that really EW 1 was biased against Sri Thommy and that he was not competent to conduct the enquiry. The learned counsel brought to my notice the following passage to show the doctrine of bias from the Judicial Review of Administrative Action (Steeven's Oceana Edition by S. A. D. Smith at page 149) which observes "*A real likelihood of bias* appears to me a substantial possibility of bias. The court, it has been said, will judge of the matter as a reasonable man would judge of any matter in the conduct by his own business. The test of *real likelihood of bias* which has been applied in a number of leading cases in magesterial and liquor licencing law, is based under reasonable apprehensions of a reasonable man appraised of the fact". According to the learned counsel, judged on the above principle the two circumstances relied on will clearly substantiate his contention. He also relied on one other decision reported in 1961 K. L. T. 290 where a Division Bench of the High Court of Kerala struck down a disciplinary proceeding instituted by a domestic

tribunal. At page 294 Their Lordships have quoted with approval the decision of the Calcutta High Court reported in A. I. R. 56 Calcutta 662:—"But the person dealing with the enquiry at any stage is in the position of a judge and the rules of natural justice demand that he should not himself be personally interested in the case. He should be a person with an open mind, a mind which is not biased against the delinquent. He should not pre-judge the issue.......... he cannot act both as a judge and as a witness........ there is no bar to a person, issuing show cause notice to try it himself, the principle that a prosecutor cannot be a judge is not strictly applicable to departmental enquiries......but he must not lower himself to the status of a common prosecutor, i. e., to say, of a person who feels it a part of his function to bring the guilt home to the accused at any cost. He must act with the detachment of a judge, since he is professing to exercise that dignified function". This has also been followed in A. I. R. 1957 Andhra Pradesh 440. In this case EW 1 was one of the persons according to whom the innuendo was made by Sri. Thommy. Before the enquiry against Thommy he was also convinced of the fact that "Suriya" tug manned by Thommy caused the accident resulting in damages and making the company liable to pay for the same. These circumstances, will clearly lead to an inference for a reasonable man that EW1 who is so m ch involved in this matter cannot be expected to have a free mind in judging the issue posed for the enquiry (Ext. E 8). As against this argument, the learned counsel for the management urged before me that the two misconducts are separate and as such the fact that Sri. John was a witness in the second enquiry cannot cause any prejudice to Sri. Thommy in Ext. E 8 enquiry and the finding recorded by him. The learned counsel contended that if Thommy's defence was looked into, it could be seen that it was hollow and that therefore he had really no defence to make and as s ch no prejudice could be said to have been caused against him. He relied on Ext. E 15 the reply sent by the Association and Ext. E 18 the letter sent by Thommy after he received the dismissal order to show that this bias has not been mentioned in those letters. A perusal of the reasons stated in Ext. E 15 will show that reasons (e) and (f) certainly cover the present ground of bias and incompetency of the enquiry officer regarding Ext. E 8 enquiry. The learned counsel stated that Sri. Thommy had not taken up the plea even at the stage of the enquiry so that it should not be looked into. I don't think that it is a convincing argument, for in spite of all these at this stage of enquiry Sri. Thommy could still hope to get a fair trial so that the fact that no such contention was raised by Thommy is no ground to overrule the present argument of the learned counsel that bias as put forward should not be looked into in judging the enquiry. When the domestic enquiry comes up before the tribunal, the tribunal has every right to see whether the enquiry has been conducted in an unbiased manner. In this case as I have already pointed out supra there is much force in the argument that the issue itself was pre-judged by the enquiry officer so that after having made the Company liable for the payment the enquiry officer in the usual course cannot go behind his own decision or the Company's decision whatever it might be to allow Sri. Thommy to go scot-free. Hence I repel the argument of the learned counsel for the management that the question of bias cannot be gone into at this stage. As a matter of fact, the circumstances do lead to the inference for a reasonable man that EW 1 had pre-judged the case and had also the possibility of a personal bias against

Sri. Thommy who had offended him by imputing dishonesty in his letter Ext. M 1 of the second enquiry.

Over and above the said circumstances the learned counsel also relied on certain other circumstances to show that there was denial of natural justice. According to him, Sri. Thommy had requested for the assistance of Sri. Varghese, a co-employ, as per Ext. E 4 which was refused by Ext. E 5 on the ground that no Union officials will be allowed to represent the charge-sheeted workmen. Ext. E 6 is a further letter informing that since he was not conversant with English he wanted the assistance of Sri. Varghese and that he was not a union official and that his defence will be seriously prejudiced in case the assistance asked for was not given. Ext. E 7 is the refusal. He had also asked for the copy of the documents relied against him which also was not given but the management informed him that he would be given facilities to get himself acquainted with the contents of the documents at the time of the enquiry. The learned counsel argued that this conduct tantamounts to a denial of natural justice, for Thommy who is not a very literate man and not knowing English, could not have been expected to conduct his defence properly especially when a large number of documents about 12 in number were marked and as many as 7 or 8 witnesses were examined. Ext. M 14 is the report of K. S. Warrier, after a on the spot inspection of the scene of the alleged accident produced at the time of enquiry. This was marked when Sri. Warrier was examined. The report is in English and no Malayalam copy was given though according to the management it was translated to him at that time. There is also an endorsement to the said effect in the deposition of K. S. Warrier. A perusal of the report would show that there were some points in favour of Sri. Thommy, but according to the learned counsel Sri. Thommy did not use those statements of facts in the cross-examination to show his innocence in the matter because of the fact that Thommy had not the Malayalam copy of the report. There is some force in the said argument for if the details of the report had been given to Sri. Thommy, he could have effectively utilised it in his favour. It would have been better if the management had given these copies of the translations to Thommy before the enquiry itself or atleast a few hours before the examination of the witnesses through whom the said documents were marked. Exts. M2 and M3 are statements of the president of the Fisheries Union and statements of fishermen. They were also not given before the enquiry to Thommy. Ext. M4 to M14 are all in English and according to the management the translations were made as and when these documents were introduced in the enquiry. Ext. M4 to M14 are all correspondences and the enquiry does not show that each of these were proved as and when the witnesses were examined so that it has to be assumed that atleast some of the documents were marked by the enquiry officer so that it cannot be said that Thommy got an opportunity of knowing all these documents. The learned counsel relied on a decision of the Supreme Court in A. I. R. 1961 Supreme Court 1·25 to show that such conduct on the part of the management do lead to the inference of denial of natural justice. The learned counsel for the management urged before me that since Exts. M4 to 14 were correspondence between the Company and the sub-inspector of fisheries and police, the canal officer and the assistant director of fisheries there was nothing in it to show that Sri. Thommy was prejudiced in the

enquiry since the enquiry officer mainly relied on the evidence regarding the accident. It is not correct to say that the enquiry officer relied on mainly on the evidence adduced but it must be presumed that as long as these documents had gone into the enquiry they were also utilised in corroborating the evidence to a certain extent. In one of the letters to the sub-inspector a request has been made by the Company to forward a report of what happened after the inspector reached the place of the accident and regarding the undertaking given by the crew to pay Rs. 75 as compensation. Ext. M 6 is the reply sent by the sub-inspector which contains certain statements to the detriment of Thommy. The learned counsel for the management argued that since Thommy had undertaken to pay Rs. 75 as compensation it must be deemed that he admitted the guilt. The basis of this admission is the report and the testimony of the Inspector at the enquiry. If the details of the reply were known to Thommy, he could have cross-examined him in a more effective manner. The refusal to give him assistance was also relied on by the learned counsel for the Association but the fact that the assistance of a co-worker was not allowed cannot amount to a denial of natural justice. It would have been better if the management had allowed the assistance of an English knowing worker or any other person to help Sri. Thommy especially in the light of the numerous documents and the evidence of numerous witnesses that were examined at the time of enquiry. Hence there is force in the argument that there has been a denial of opportunity in the domestic enquiry to Sri. Thommy to substantiate his innocence. Regarding the assistance to be given to the delinquent in a domestic enquiry the learned counsel brought to my notice the observations of the Calcutta High Court in the ruling in 1961 II L. L. J. page 212 at pages 331 & 332. Their Lordships pointed out:— "Assistance of a lawyer cannot always be regarded as a part of "reasonable opportunity to show cause". Courts in India on the particular facts of some cases have held that assistance of a lawyer was not part of a reasonable opportunity. It may on the facts of a particular case be a luxury, unnecessary or immaterial. What is reasonable opportunity in the Indian constitutional context of Art. 311 (2) will depend on the facts of each case and the Constitution has laid down no hard and fast rule by defining reasonable opportunity for all cases". With this dictum in mind, if this case is viewed, it could be seen that Sri. Thommy who is only a syrang of a tug and not conversent with English could not be said to have been given sufficient opportunity in the domestic enquiry wherein many witnesses and documents were marked by an enquiry officer who himself was not well-versed in Malayalam language so much so that he (enquiry officer) had to seek the help of another to take down the statement made by the witnesses at the time of the enquiry while he himself took down the statements in English. The said statements taken by him in English have been produced as Ext. E19, and a very close perusal of Ext. E19 with the translation as given in the paper book will show that there are certain discrepancies which to a certain extent will affect the evidence if viewed as a whole. Hence considering these facts, I hold that the enquiry is vitiated. Ext. E 9, the findings, may now be looked into. In Ext. E 9, paras 1 to 3 relate to the misconducts. The first misconduct is that he was grossly negligent and careless.... "due to his carelessness and negligence the crafts and tugs in tow dashed against 22 fishing stakes. The second misconduct is that "he was either drunk or sleeping while on duty". And the third misconduct is that

"he caused unnecessary loss to the Company since the Company had to pay Rs. 500 as damages". After pointing out the evidence taken by him in the next para he proceeds in the further para his findings wherein it is stated "It is clear that *either the tug or the tow* have caused the damage to the stakes and the nets" and in para 3 he has stated that it was caused by gross negligence and carelessness of syrang Thommy under the influence of liquor while he was in charge of the tug. These findings are also attacked as perverse by the learned counsel. He relied on the statement in the evidence of EW 1 to show that really he has not considered any material evidence in the case. To support this he pointed out that when he was questioned as to whether he had seen Ext. M 1, his answer was "I think I have seen Ext. M 1 of Ext. E 12 after my enquiry". Ext. M 1 is the explanation given by the delinquent worker in reply to the charges framed so that according to the learned counsel it is unimaginable that the enquiry officer found an employee guilty without considering his explanation. He also pointed out that there is no reliable evidence to show that Sri. Thommy was drunk or sleeping which caused the tug and the tow to cause the accident. A perusal of the testimony at the domestic enquiry to a great extent justifies the above argument. The case of drunkenness and sleeping while on duty was attempted to be proved only in the re-examination of Witnesses and that by leading questions since the witnesses did not swear to it at the earlier stages. At page 33 of the paper book MW 4 in Ext. E8 enquiry in his re-examination was put a question relating to drunkeness of Thommy for the first time:—"നിങ്ങൾ tug കാരെ കാണുന്ന സമയത്തു് അവർ കുടിച്ചിരുന്നതായി തോന്നിയോ? (Q)

അവർ കുടിച്ചിരുന്നതായിട്ടാണു് എനിക്കു തോന്നിയതു്. (A)

A similar question is put to MW 5 at page 40 of the paper book in the re-examination. The learned counsel from this wanted the Court to infer that the enquiry was not fair and in support of it he relied on the ruling in 1963 I LLJ at page 797 wherein. Their Lordships' remarked:— "A tribunal charged with quasi-judicial functions—and a domestic tribunal is of such a nature—is expected to approach the question for decision by it in an objective manner. If facts of the enquiry show that an attempt was made in it to put leading questions in order to get answers in support of the charge, it is obvious that such an enquiry cannot be said to be quite fair". In this case the charge sheet would show that Thommy's misconduct was that accident was caused by his negligence either he being drunk or sleeping while on duty so that if there is no evidence for his drinking or sleeping while on duty, the misconduct will have to fall. At the time of the domestic enquiry no evidence touching drunkenness was brought out excepting by leading question in the re-examination. If the negligence attributed resulting in the misconduct falls to the ground, then it can only be a pure accident and it cannot form the basis of a misconduct so that the evidence regarding drunkenness which alone is attempted at the domestic enquiry has been by putting leading questions and getting answers to the same which answers itself are not very definite so that it cannot be said that the findings are justified by the evidence on record. It can only be characterised as perverse and the enquiry itself not fair. It has also come out in evidence that even one of the witnesses, the legal assistant, was helping the enquiry officer by questioning the witnesses often which also shows that the enquiry was not quite fair to the delinquent. Especially in view of this

fact it would have been better that the management had given the worker the assistance requested for on the peculiar facts of this case. It may also be pointed out that in the report of K. S. Warrier, (M14), he has stated the manner in which the accident would have happened. (see "The residents on the shore, hearing the shouting came alongside the tug in canoes and stopped the tug. When the tug slowed down the tow behind came crosswise, because of the low tide and strong current, dashed against the stakes and few were broken".). That such an accident is possible can be seen even from the suggestion made in the cross-examination by the enquiry officer DW 1 at the domestic enquiry (see page 48 of the paper book). Sri. Warrier when examined at the enquiry by the management stated, in reply to a question as to the result of this enquiry regarding the accident, in support of the suggestion, viz., that since the fishermen approached the tug and asked the tug to stop it the tug was slowed down when the tow behind hit the stakes. He has also definitely stated that no torn nets were found on the stakes. The evidence would further show that the boats and the barge in tow have ruddermen of their own for directing the tow so that the hitting of the stakes by the tow cannot be attributed to the syrang of the tug. EW1 of course, stated that the manoeuv rability of the tow is small but has not stated to what extent it could be done. I have pointed out this only to show that EW 1 completely ignored Sri. Warrier's report. I am not discussing the said evidence as in appeal but only pointing out that the real finding of EW 1 is as stated by him in his words in Ext. E 9 that either the tug or the tow must have caused the accident so that if that is accepted then his finding that Sri. Thommy was responsible for the accident is neither reasonable nor justified but can only be characterised as perverse. In these circumstances, I find that the first enquiry and the findings are not justified and is set aside in the light of the discussion above.

I shall now consider the second enquiry. The charge-sheet is Ext. E 10. It is based on the reply to Ext. E1. Ext. E 10 shows that the charge is that Thommy has alleged dishonesty and imputed motives of the conduct of the officers who had dealt with the matter the innuendo being that these officers had either received illegal gratification from the fishermen concerned by persuading the Company to pay them Rs 500 or committed fraud on the Company by extracting this amount from the company for their own benefit without paying it to the fishermen concerned. In reply to this, Sri. Thommy submitted an explanation dated 8th August, 1962 and marked as Ext. M 1 in Ext. E 12 enquiry. In the letter, Ext. M 2, he has categorically stated that the reference if any to officers in Ext. M 1 is not made against the officers of the Company. He has never meant it. He has stated that on receipt of the letter dated 28-7-1962 he was about to leave for Quilon and since he did not know to read English, he entrusted the letter to one knowing English. He gave the details and the said individual wrote the reply in English and since he was ignorant of English, he signed the letter and sent it to the Company. The company was not satisfied with this and hence the enquiry was ordered and Ext. E 10 was given. In Ext. E 10 no mention of the officer's name against whom the innuendo is alleged to have been made is stated. It is only at the stage of enquiry the names of the officers are brought out. In the enquiry the legal assistant and EW 1 are examined. Thommy was also examined. It is when Thommy

was examined that he stated that the officers mentioned do not refer to the Company officers but the fishery officers whose influence on the Company caused the payment. He was questioned as to who wrote the letter and it was stated that it was Raman Pillai the president of the Union that drafted the English reply. He also stated that he believed that what all he stated had been written in the reply and he even went to the extent of stating that if any innuendo had been made against the Company officers it must have been done at Raman Pillai's initiative and not from the facts stated by him to Raman Pillai for writing the reply. After this a question was put to him whether it was not the departmental head John who attended to the matter involved in the accident and the legal assistant who attended to the disciplinary matters, and he stated that he is not sure about it. Again a suggestion is made as to whether he did not make allegations against these two persons in a tea shop. The suggestion in the question is that Rs. 200 alone was paid to the fishermen while Rs. 300 out of Rs. 500 was appropriated by the labour officer and others. (see page 124 of the paper book) This information is also divulged for the first time to the delinquent and not found in the charge sheet. This Vivekanandan is not examined. Sri. Bhaskaran was examined in Malayalam and his evidence would show that he in the presence of Sri. John questioned Sri. Raman Pillai about the letter and innuendo contained therein at the labour office and Sri. Raman Pillai did not give a direct answer but stated that he would not have written what Thommy had not stated. He further swears that he firmly believes that it was written at the instance of Thommy that Raman Pillai wrote it. Sri. Thommy did not cross-examine. The next statement is by Sri. John. It is taken in English. There is no endorsement to show that it was translated to Sri. Thommy. He also definitely corroborates the legal assistant. Sri. Thommy has not cross-examined him. It is on the basis of these two statements of the legal assistant and Sri. John and Ext. M 1 that the enquiry officer found Thommy guilty. This finding was also entered on 15-9-1962, i.e., before the findings of the enquiry of Ext. E 12. It is argued by the learned counsel, and rightly too, that if the Company had information that Sri. Thommy had referred officers in the letter Ext. M 1 to Sri. Bhaskaran and Sri. John that specific charges ought to have been mentioned in Ext. E 10 the charge sheet. The tea shop man's name comes for the first time and it cannot be said that the enquiry officer has not been influenced by the alleged conversation of Sri. Thommy at the tea-shop and spoken to by Bhaskaran. These are facts brought for the first time in the evidence. If the two documents alone are taken into account, viz., Ext. M 1 & M 2, there is no evidence to support the finding. The non cross examination of Sri John cannot be attributed to any defect on the part of Thommy for there is nothing to show that his testimony was translated. It may also be seen that the enquiry officer of Ext. E13, namely EW2, also had pre-judged the issue in the sense that he has mentioned even before the findings were arrived at in Ext. E9 that Syrang Thommy was responsible and that the Company had to pay Rs. 500 as compensation due to his mistake. It cannot be said that it is a mere statement of facts. The learned counsel argued that since he word disloyal was found in the letter it can only refer to the Company's officers. It would have been quite pertinent if it had been shown that Thommy knew English or knew the meaning of English words, especially

its legal import." It may also be pointed out here that the meaning of the word disloyal as could be seen from the Dictionary are "not loyal" and "unfaithful", so that the learned counsel's argument that because the word disloyal has been used it can refer only to the Company's officers is not correct. Unfaithful means "not true". Further the word loyal has also got a meaning "legitimate". If these two meanings are taken, it does not necessarily follow the inference which the learned counsel wants this Court to draw. If the latter word is taken it cannot be said the legal import of it will fall to the ground unless it is shown that Sri Thommy used it in the sense "not loyal". As a matter of fact, the finding itself is mainly based on the legal aspect of the word disloyal which cannot be given any weight at all since there is no case that Sri Thommy knows English well. The learned counsel for the management argued practically on the meaning of the word disloyal and his attempt was to show that the officers mentioned therein can only mean the Company's officers and not any other. It has come out in the cross-examination that at the time of enquiry Ext. E 12 Sri Bhaskaran, John and Thommy were present throughout and in the question asked at page 118 is very pertinent. It is as follows:—

"ഈ പറഞ്ഞ ലററിൽ നിങ്ങളും കമ്പനിയിലെ ഉദ്യോഗസ്ഥന്മാർ അഞ്ചാറ് ശ്രീ കമ്പനിയെ പററിച്ചു എന്നു എഴുതിയിട്ടുണ്ട്, ഇല്ലേ?"

The basis of that question according to him is Ext. M 1, and Ext. M 1 does not contain any such innuendo. He has also further stated that at the time of enquiry he did not know who were the officers involved in the matter but at page 122 a definite question is put to the witness Thommy for the first time whether it was not John and Bhaskaran, and when the enquiry officer was asked as to how he got that information contained in the question his answer was that he knew that those were the persons who are looking after the duties mentioned in the question. I have only pointed out these to show that the enquiry officer must be presumed to have some other knowledge than contained in the charge-sheet and not disclosed to the delinquent. It is also seen that the legal assistant also asked questions while he himself was one who was affected by the innuendo. I don't think such questioning is in any way fair to the delinquent concerned. These circumstances discussed and pointed out above clearly show that the enquiry was not a fair one nor was the delinquent given full opportunities to defend himself, for the names of the officers who were the subject matter of the innuendo, were disclosed or brought in the evidence only at the time of the enquiry which certainly prejudiced greatly the delinquent in proving his innocence. In these circumstances I find that the second enquiry has also not been fair nor are the findings reasonable. I set aside the same.

In these circumstances I find that the dismissal order passed on the basis of the findings has to be set aside, and I set aside the same.

Point No.3:—Regarding the relief the learned counsel for the Association insisted that the normal rule should apply while the counsel for the management stated that it would not be either in the interest of the worker concerned or the Company that he be reinstated. He has also pointed out that the head of the office who is Sri John himself has lost confidence in this worker and that if at all he may be given compensation in lieu of reinstatement. Sri Thommy has worked for 27 years and is practically about to retire. He has a clean record in the service

of the Company. But however, considering the peculiar circumstances of this case as well as the second enquiry I find that it would not be in the interest of the worker concerned or the Company to reinstate him, for he will have again to work under EW 1. One cannot expect that everything will go on smoothly. Hence I would award him compensation in lieu of reinstatement. He is entitled to his full back-wages since the management has not been able to show that he was working elsewhere though there was an allegation to the said effect which stands unsubstantiated. I therefore allow him the entire back-wages. As regards reinstatement, I have already pointed out that considering the circumstances brought out in this case and referred to by me it will only be proper that he is given compensation instead of reinstatement. He has already put in 27 years of service and he has passed the age of 49. It was admitted at the time of argument that the age of superannuation is 58. Thus he has got 9 years of service more, but as I have already pointed out if he is reinstated he will have to work under EW1 & EW 2 who, from the evidence I find, are not well inclined towards him especially in the light of the alleged dishonesty made by the worker against them though he denies it. EWs 1 & 2 swear that the said allegation is against them so that it is futile to contend that they will not have a grievance against him. As regards compensation to be allowed, the principles that have to be followed are practically laid down in 1957 II L.L.J.696. Applying these principles and also taking into consideration the fact that the worker is a skilled artisan and the chances of getting jobs in tugs or boats, are not very remote and hence I would fix the compensation at Rs. 3,500. He will also be entitled to the gratuity and provident fund, if any, as per the rules of the Company. His dismissal is set aside.

In the result, I pass an award as indicated above and in view of the compensation, back-wages, etc., given I order no cost. This award will take effect on the expiry of 30 days from the date of its publication in the Government Gazette under section 17 of the Industrial Disputes Act, 1947.

Quilon,
23-10-1963.

V. K. MADHAVAN NAIR,
Presiding Officer.

Appendix.

Witnesses examined on behalf of the Union:—

WW1 O. M. Thommy.

Witnesses examined on behalf of the Management:—

EW1 G. V. John.
EW2 P. V. Sundareswaran.

Exhibits marked on the side of the Union:—

Ext. W1 Copy of showcause notice dated 28-7-1962 issued to Thommy.
Ext. W2 Copy of explanation dated 3-8-1962 by Thommy.
Ext. W3 Copy of showcause notice dated 16-8-1962 issued to Thommy.
Ext. W4 Copy of explanation dated 8-8-1962 by Thommy.

Ext. W5 Copy of enquiry notice dated 7-8-1962.
,, W6 Copy of letter dated 14-8-1962 from Thommy.
,, W7 Copy of memo dated 14-8-1962 issued to Thommy.
,, W8 Copy of letter dated 16-8-1962 from Thommy to the management.
,, W9 Copy of memo dated 16-8-1962 issued to Thommy.
,, W10 Copy of memo dated 22-8-1962 issued to Thommy.
,, W11 Copy dismissal order dated 29-9-1962 issued to Thommy.
,, W12 Copy of letter dated 1-10-1962 from the Union to the management.

Exhibits marked on the side of the management:—

Ext. E1 Copy of charge sheet dated 28-7-1962 issued to Thommy.
,, E2 Copy of enquiry notice dated 7-8-1962 issued to Thommy.
,, E3 Copy of letter dated 8-8-1962 from Thommy to the management.
,, E4 Copy of letter dated 14-8-1962 from Thommy to the management.
,, E5 Copy of reply dated 14-8-1962 to Thommy.
,, E6 Copy of letter dated 16-8-1962 from Thommy to the management.
,, E7 Copy of reply dated 16-8-1962 to Thommy.
,, E8 Copy of proceedings of the enquiry against charge sheet dated 28-7-1962.
,, E9 Copy of findings of the enquiry dated 20-9-1962.
,, E9(a) Original of Ext.E9.
,, E10 Copy of show cause notice dated 6-8-1962 issued toThommy.
,, E11 Copy of enquiry notice dated 22-8-1962 to Thommy.
,, E12 Copy of enquiry proceedings in respect of chargesheet dated 6-8-1962.
,, E13 Copy of findings of the enquiry dated 15-9-1962.
,, E14 Copy of dismissal order dated 29-9-1962 issued to Thommy
,, E15 Copy of letter dated 1-10-1962 from the Union to the management.
,, E16 Copy of reply dated 5-10-1962 from the management to the union.
,, E17 Report submitted by O. M. Thommy to the Company.
,, E18 Letter dated 29-10-1962 from Thommy to the management.
,, E19 Files containing the proceedings of the enquiry in English
,, 20 Trip sheet of Tug Suriya.
,, E21 Trip sheet of Tug Ventura.

Kerala Gazette No. 1 dated 7th January 1964
PART I

GOVERNMENT OF KERALA

Abstract

EDUCATION—KERALA EDUCATION RULES—AMENDMENTS TO RULES IN CHAPTER IV.

EDUCATION 'J' DEPARTMENT

G. O. (P) 837/63/Edn.

Dated, Trivandum, 28th December 1963.

NOTIFICATION

S. R. O. No. 1/64.— In exercise of the powers conferred by Section 36 of the Kerala Education Act, 1958 (Act 6 of 1959), the Government of Kerala hereby make the following amendments to the Kerala Education Rules, 1959, namely: —

AMENDMENTS

I. In Chapter IV of the said Rules—

(1) For the existing schedule under rule 1, the following shall be substituted :—

SCHEDULE

Lower Primary Schools, Upper Primary Schools with or without Lower Primary Section	·4 to ·8 Hectares
Secondary Schools (High Schools) with or without Primary Section	1·2 to 2 Hectares
Higher Secondary Schools with or without Primary Section	1·2 to 2 Hectares
Training Schools with or without Model Schools	1·2 Hectres

(2) In sub-rule (1) of rule 4, for the figure and word "200 yards" the figure and word "183 metres" shall be substituted.

(3) In sub-rule (2) of rule 4, for the figure and word "200 yards" the figure and word "183 metres" shall be substi uted.

(4) In sub-rule (4)(ii) of rule 5, for the figure and word "4 feet", the figure and word "1·22 metres" shall be subsuituted.

(5) In sub-rule (4) (iv) of rule 5, for the figure and words "48 square inches" the figure and words "·03 square metre" shall be substituted.

(6) In sub-rule (1) of rule 6, for the figures, marks and abbreviations "20′ x 20′ x 12′, 20′ x 18′ x 10′" and "5′" the figures marks and abbreviations "6 m x 6 m x 3·7 m" "6 m x 5·5 m x 3 m", and "1·5 m" shall respectively be substituted.

(7) In sub-rule (2) of rule 6, for the words "eight feet" the figures and abbreviation "2·4 m" shall be substituted.

G. 4353.